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No. 84-1993 (5)

In the Supreme Court of the United States

OCTOBER TERM, 1985

JOHN HYDE, PETITIONER

v.

BERNARD L. VAN WORMER, DONALD REGAN, RICHARD SMULEVITZ AND INLAND STEEL COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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Petitioner, an attorney, seeks review of the decision below imposing sanctions against him personally for prosecuting frivolous litigation in the federal courts.

1. The pertinent facts[1] are as follows:

During 1981-1982 one Lepucki filed with his employer, respondent Inland Steel Co., IRS Forms W-4 claiming complete exemption from federal income tax withholding (Pet. App. 37). Inland sent the forms to the IRS, which, following an investigation, instructed the company to

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[1]We are setting forth the facts of the case involving the federal respondents. The facts of the other case considered by the court of appeals, which involved petitioner's representation of other tax protesters in litigation against a different employer, are set forth in the court of appeals' opinion (Pet. App. 34-37).

resume withholding taxes from Lepucki's wages. Lepucki and others, retaining petitioner John Hyde as their lawyer, then brought a damages action against Inland, contending inter alia that they were exempt from withholding because wages are not income and federal reserve notes are not money. See *Edgar* v. *Inland Steel Co.*, 744 F.2d 1276, 1278-1279 n.4 (7th Cir. 1984). The district court dismissed that action, and the court of appeals affirmed, noting that plaintiffs' constitutional and statutory arguments represented a "time-worn challenge to the federal income-tax withholding system" (*id.* at 1278 (footnote omitted)). The court of appeals also granted Inland's request for sanctions, in the form of attorney's fees and costs, against Lepucki and the other plaintiffs (*id.* at 1278-1279)).

Subsequently, the IRS assessed a $500 penalty against Lepucki for providing false information on his Form W-4. See 26 U.S.C. 6682. Respondent Van Wormer, an IRS employee, served a notice of levy on Inland in order to collect this liability. See 26 U.S.C. 6331. Respondent Smulevitz, then payroll supervisor of Inland, informed Lepucki that the penalty would be deducted from his wages as directed by the IRS (Pet. App. 37). Lepucki, once again retaining petitioner Hyde as his lawyer, filed a complaint in Indiana state court, asserting (1) that the IRS had defamed him when it informed Inland that he was being penalized for providing false information on his Form W-4, (2) that respondent Smulevitz repeated the slander when he so informed Lepucki, and (3) that Smulevitz and Inland wrongfully withheld taxes from his wages. Respondents removed the action to federal court. The district court dismissed the action against the named IRS officials, holding that they were immune from suit (Pet. App. 6-10). The slander action against Smulevitz was dismissed after the court determined that his statements were true (*id.* at 10-13). The district court granted respondents' motion for

costs and attorney's fees, finding that the action was instituted in bad faith (*id.* at 17). The damages were assessed against Lepucki and petitioner Hyde "jointly and severally" (*id.* at 19).

Both Lepucki and petitioner appealed to the Seventh Circuit. Their appeal was consolidated with another case in which petitioner likewise sought review of sanctions imposed on him for urging the invalidity of the Federal Reserve System as a ground for refusal to pay taxes (Pet. App. 35-36). Petitioner's primary argument on appeal was that, since "there are no dollars and a court can enter judgment only in dollars, no court can enter a valid judgment for money today" (*id.* at 36, 39). The court of appeals rejected this contention as "outrageous" (*id.* at 36). It also rejected petitioner's argument, predicated on the Due Process Clause, that the district court improperly imposed sanctions on him without affording him a hearing. Petitioner, the court of appeals noted, was aware that a motion for sanctions was pending before the district court, had filed a memorandum in opposition to that motion, and had failed to attend the hearing scheduled by the district court (*ibid.*). "[H]aving voluntarily chosen not to attend the hearing," the court of appeals concluded, petitioner "cannot now complain that he is entitled to additional process" (*id.* at 37). The court of appeals affirmed the district court's judgments in both cases and imposed further sanctions against petitioner for abusing the judicial process by filing frivolous appeals (*id.* at 39).

2. Taxpayer Lepucki has not sought review of the decision below. Attorney Hyde challenges that decision solely on his own behalf, urging that the Seventh Circuit erred in imposing sanctions, and in sustaining the district court's imposition of sanctions, on him personally. His primary contention is that the sanctions are impermissible "because there exists no United States Supreme Court decision which

holds that federal reserve notes are dollars" (Pet. 15). Petitioner appears to contend that a "dollar" must contain 371.25 grains of fine silver and that he accordingly "cannot comply with the order to pay fees in dollars" (see *id.* at 13, 44). As the court or appeals observed (Pet. App. 36), this argument is "so absurd that it merits no response." See, *e.g.*, *Veazie Bank* v. *Fenno*, 75 U.S. (8 Wall.) 533, 548-549 (1869); *Knox* v. *Lee*, 79 U.S. (12 Wall.) 457 (1870); *Nortz* v. *United States*, 294 U.S. 317, 328 (1935). Petitioner's contentions are absolutely baseless and his petition should be denied.

3. Rule 49.2 of this Court's Rules provides: "When [a] petition for writ of certiorari is frivolous, the Court may award * * * the respondent appropriate damages." The non-federal respondents have moved for an award of damages against petitioner in this case, and we believe that an award of damages is amply justified.

The questions petitioner seeks to present for review — *e.g.*, "Was the value measured by one dollar fixed by the Constitution?"; "Is the dollar a concept and not a tangible thing?"; "Can anything be a standard of value which has no intrinsic value?"; "Can our monetary system function fairly without a standard unit of value?" — are the by-now-familiar cant of the tax-protest movement. The IRS informs us that it received some 37,000 illegal protest returns in fiscal 1983, a six-fold increase over the comparable figure for 1978. "This lawsuit," as the court of appeals observed, "represents yet another disturbing example of a patently frivolous appeal filed by abusers of the tax system merely to delay and harass the collection of public revenues" (Pet. App. 31).

In some instances, participants in the tax-protest movement are unsophisticated or ignorant people who themselves are preyed upon by purveyors of tax-evasion schemes. Petitioner, by contrast, is an attorney and an officer of the court. "Perhaps the greatest safeguard against

th[e] danger [of clogging court dockets with vexatious claims] is the integrity and good sense of practicing lawyers who, as officers of the court, have both an ethical and legal duty to screen the claims of their clients for factual veracity and legal sufficiency" (Pet. App. 35). Petitioner woefully failed to discharge that duty in these cases. His conduct "evidences disdain for the public, whose claims lie dormant because frivolous suits have diverted away scarce judicial resources, disdain for adversaries, who must expend time and money to defend against meritless attacks, and disdain for clients, whose trust is rewarded with legal bills, dismissals, and court-imposed sanctions" (*ibid.*).

Petitions such as this one have only two conceivable goals — to delay the payment of damages already assessed, and to waste the resources of the private respondents, the federal government, and this Court. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied, and that damages should be assessed against petitioner under Rule 49.2 of this Court's Rules.[2]

CHARLES FRIED
Acting Solicitor General

SEPTEMBER 1985

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[2]We are filing a motion for an award of damages on behalf of the federal respondents contemporaneously with this memorandum.